

STEEL  
HECTOR  
DAVIS

Steel Hector & Davis LLP  
215 South Monroe, Suite 601  
Tallahassee, Florida 32301-1804  
904 222-2300  
904 222-8410 Fax

Charles A. Guyton  
904 222-3423

December 2, 1997

ORIGINAL

By Hand Delivery

Blanca S. Bayó, Director  
Records and Reporting  
Florida Public Service Commission  
4075 Esplanade Way, Room 110  
Tallahassee, Florida 32399-0850

**Re: Petition of Duke Energy New Smyrna Beach Power Company, L.L.P. for  
Declaratory Statement Concerning Eligibility To Obtain Determination of  
Need Pursuant to Section 403.519, Florida Statutes  
Docket No. 971446-EU**

Dear Ms. Bayó

Enclosed for filing on behalf of Florida Power & Light Company are the original and fifteen (15) copies of Motion for Leave to Participate Amicus Curiae Docket No. 971446-EU. Also enclosed is an additional copy of the motion which we request that you stamp and return to our runner.

If you or your Staff have any questions regarding this filing, please contact me at 222-2300.

- ACK
- AFA
- APP  *Full of*
- CAF
- CHY
- CLK
- DM  **3**
- ELM
- FLY
- GR
- HR
- WAS  **1**
- OTH

RECEIVED & FILED  
*4*  
CLERK OF RECORDS

Very truly yours,

Charles A. Guyton

DOCUMENT NUMBER DATE

97-1446-12281 DEC-25  
St. West 305 292 7272 582 West 4100  
305 292 7271 Fax 582 West 4100 Fax

West Palm Beach  
561 850 7200  
561 855 1509 Fax

Miami  
305 577 7000  
305 577 7001 Fax

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Duke Energy New Smyrna )  
Beach Power Company, L.L.P. for )  
Declaratory Statement Concerning )  
Eligibility To Obtain Determination of Need )  
Pursuant to Section 403.519, Florida Statutes )

Docket No. 971446-EU

ORIGINAL

Filed: December 2, 1997

FLORIDA POWER & LIGHT COMPANY'S  
MOTION FOR LEAVE TO PARTICIPATE AMICUS CURIAE

Pursuant to Rule 25-22.037(2), F.A.C., Florida Power & Light Company ("FPL") moves the Commission for leave to participate in the Commission's consideration of the declaratory statement proceeding initiated by Duke Energy New Smyrna Beach Power Company, L.L.P. ("Duke"). FPL respectfully submits that its amicus curiae participation will facilitate the Commission's consideration of the issues raised by Duke.

On December 1, 1997 FPL filed an amicus curiae memorandum of law in Docket No. 971337-EU. The petition filed in Docket No. 971337-EU raises essentially the same issue as is raised in this docket: whether a "merchant plant" (non-utility generator) may seek a determination of need on its own without a utility co-applicant (another demonstration that the issues raised are matters of broad agency policy rather than requests premised upon facts peculiar to the petitioners). Rather than refile the same amicus curiae memorandum of law in this docket merely substituting the name "Duke New Smyrna" for "Duke Mulberry/IMCA," FPL asks that its amicus curiae memorandum of law filed in Docket No. 971337-EU be considered as a submission of an amicus curiae memorandum in this proceeding as well.

FPL also requests that the Commission allow FPL to participate at the Agenda Conference at which the Duke New Smyrna petition is considered. Duke New Smyrna has raised an issue, the eligibility of merchant plants for determinations of need, the resolution of which will have an immediate impact on FPL. If such determinations of need are permitted despite prior Commission precedent to the contrary directly on point, then FPL faces immediate injury. The emergence of merchant plants in Florida will (a) result in the loss of sites available to FPL to construct power plants, (b) increase environmental impacts, including air emissions, making it more difficult for FPL to site power plants, (c) confuse, if not frustrate, the planning of FPL's generation and transmission system, and (d) either modify the interpretation of the Siting Act so as not to focus upon the need of the entity with an obligation to serve or result in the Siting Act being applied differently to entities with an obligation to serve and to entities without an obligation to serve.

FPL should be allowed to participate at the Agenda Conference at which Duke New Smyrna's petition is heard because, (a) its participation will facilitate the Commission's deliberation by bringing before the Commission numerous precedents and arguments not addressed in the Duke New Smyrna petition, (b) Duke New Smyrna raises policy issues of broad applicability, and (c) FPL should have the opportunity to protect its interests, which stand to be injured if the declaratory statement is granted.

The Commission has previously allowed amicus curiae participation in actions before it. See, In re: Petition of Florida Power and[sic] Light Company for a Declaratory Statement Regarding Request for Wheeling, 89 FPSC 2: 298; In re: Investigation of the ratemaking and accounting treatment for the dismantlement of fossil-fueled generating stations, 91 FPSC 7: 136,

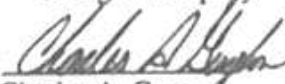
In re: Complaint by Telcom Recovery Corp. Against TRANSCALL AMERICA, INC. D/b/c ATC LONG DISTANCE regarding billing discrepancy, 93 FPSC 8: 447; But cf. In re: Investigation regarding the appropriateness of payment for Dial-Around (10XXX, 950, 800) compensation from interexchange telephone companies (IXCs) to pay telephone providers (PATS), 93 FPSC 7: 379 (denied because it was, in effect, an untimely motion for reconsideration); In re: Petition for Declaratory Statement Regarding Exemption from Public Service Commission Regulation for Cellular Radio Telecommunications Carrier by Cellular World, Inc., 92 FPSC 2: 646 (denied as essentially an untimely petition for reconsideration). The Commission also effectively permitted Gulf Power to participate as amicus curiae in the Monsanto proceeding by denying intervention but allowing Gulf to be file a brief. See. In re: Petition of Monsanto Company for a declaratory statement concerning the lease financing of a cogeneration facility, 86 FPSC 12:354 (Order No. 17009).

FPL respectfully submits that its amicus curiae participation should be permitted

Respectfully submitted,

Steel Hector & Davis LLP  
215 S. Monroe St, Suite 601  
Tallahassee, Florida 32301  
Attorneys for Florida Power  
& Light Company

By:

  
Charles A. Guyton

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Motion for Leave to Participate Amicus Curiae was served by Hand Delivery (when indicated with an \*) or mailed this 2nd day of December, 1997 to the following:

Richard Bellak, Esquire \*  
Division of Legal Services  
Florida Public Service Commission  
4075 Esplanade Way, Room 370  
Tallahassee, Florida 32399-0850

Robert Scheffel Wright, Esquire \*  
Landers & Parson  
310 West College Avenue  
Tallahassee, Florida 32301

John W. McWhirter, Jr., Esquire  
McWhirter, Reeves, McGlothlin,  
Davidson, Rief & Bakas, P.A.  
Post Office Box 3350  
100 North Tampa Street  
Tampa, Florida 33602-5126

Robert S. Lilien  
Duke Energy Power Services, LLC  
422 Church Street, PBO SB  
Charlotte, North Carolina 28242

  
Charles A. Guyton

TAL/23054-1